



U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

October 31, 2023

VIA ECF

Honorable Sanket J. Bulsara
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Erick Diaz Cruz v. United States of America and Henry V. Santana*
No. 20-CV-891 (EK) (SJB)

Dear Judge Bulsara:

This Office represents Defendant United States of America (the “government or the “United States”) in the above-referenced action. The United States writes on behalf of the parties to request an adjournment of the settlement conference currently scheduled before Your Honor for November 14, 2023 at 2:30 p.m. to a date and time convenient for the Court after December 7, 2023.

By way of background, Plaintiff Erick Diaz Cruz commenced this action on February 20, 2020, against Immigration and Customs Enforcement (“ICE”) Officer Henry V. Santana (“Defendant Santana”), asserting claims pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Plaintiff alleges that Defendant Santana is individually liable for constitutional violations stemming from a February 6, 2020 incident in which Defendant Santana allegedly shot Plaintiff. *See* Dkt. No. 1. On April 20, 2021, Plaintiff filed an Amended Complaint that, *inter alia*, added claims pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680 against the United States arising from the same alleged shooting. *See* Dkt. No. 29 (“Amended Complaint”).¹

The Court previously stayed this case due to a joint investigation conducted by the Department of Homeland Security’s Office of the Inspector General (“DHS OIG”) and the Criminal Division of the U.S. Attorney’s Office, Eastern District of New York. *See* Court’s September 20, 2021 Order. Following the conclusion of that investigation, Your Honor lifted the stay and the parties appeared on July 26, 2023 for an initial conference.

¹ On March 20, 2023, following briefing by Defendant Santana and Plaintiff, this Court dismissed the *Bivens* claims against Defendant Santana, leaving the United States as the sole defendant in this action. *See* Dkt. No. 67 (Court’s Memorandum & Order).

Following the parties' negotiation and the Court's entry of a protective Order on October 24, 2023 (see Dkt. No. 75), Defendant exchanged the DHS OIG report. The parties have continued to confer concerning discovery responses, as well as to exchange documents and information to evaluate this case for settlement. The parties request an adjournment of the settlement conference to allow for additional time to complete that exchange, as well as to review that information to determine each party's position on settlement, as per Your Honor's Individual Rules concerning Settlement Practices.

The parties are available on December 8, December 11, and December 18, 2023 as proposed alternative dates.

The parties thank the Court for considering this request.

Respectfully submitted,

BREON PEACE
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cc: All attorneys of record via ECF